

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1163 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

JAY MECHANICAL & ELECTRICAL ENGINEERING WORKS

Versus

STATE OF GUJARAT

Appearance:

MR KG SUKHWANI for Petitioner
MR KG SHETH, AGP for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 20/04/2000

ORAL JUDGEMENT

1. By filing this appeal under sec.96 of the Code of Civil Procedure, 1908, the appellant- original plaintiff has challenged the judgment and decree dated 3rd May,1980 passed by the learned Jt. Civil Judge (S.D.), Mehsana in Regular Civil Suit No. 71/74 by which, learned Trial

Judge partly allowed and partly dismissed the suit of the plaintiff and ordered that the plaintiff do recover Rs. 12873.00 with running interest at the rate of 6% per annum from the date of decree till realisation from defendant. By the said judgment and decree, learned Trial Judge dismissed the suit of the plaintiff for Rs. 34105.00.

2. Plaintiff is a registered partnership firm and it carries on business of engineers and contractors at Karamsad. Executive Engineer, Dharoi Head Works Division, Visnagar, invited quotations for the supply of steel doors, cup-boards, window frames, windows and ventilators. Appellant submitted their quotations to the Executive Engineer on 4th February, 1971. Quotations of the appellant were accepted by the Executive Engineer as per his letter No. SK/ 1184 of 1971 dated 20th February, 1971. As per the case of the appellant, as the work was of urgent nature, Executive Engineer orally asked the appellant to supply goods as per quotations worth Rs. 60,000/ by the first week of March, 1971. It is alleged that the Executive Engineer did not make payment to the plaintiff on the ground that formal sanction to quotations was not received from Superintending Engineer, North Gujarat Irrigation Project, Circle Himmatnagar and further intimated that payment would be made soon after quotations receives a formal sanction of Superintending Engineer. As per appellant's case, they had supplied materials worth Rs. 60,000/ by the first week of March, 1971. The appellant was not paid amount of Rs. 60,000/ against the material supplied by the appellant to the respondent. But instead, appellant was paid less amount and was paid Rs. 33,711/-. Appellant served statutory notice to the respondent on 21st February, 1973 and 18th February, 1974 requesting the respondent to make payments. As the respondent failed to comply with the requirements of the said notice, appellant was constrained to file above-numbered suit to recover the amount of 46,978/ with running interest at the rate of 12% per annum from the date of the suit till realisation.

3. Respondent filed its written statement at exh.10, inter alia, contending that quotations filed by the appellant were not accepted by the Executive Engineer as per his letter No. SK/1184 of 1971 dated 20th February, 1971. It was contended that the plaintiff-appellant cannot claim beyond what was mentioned in the tender agreement. It was further contended that unless the contract is executed with the government and a letter of acceptance known as Work Order is issued to the appellant plaintiff, whatever material

brought by the appellant plaintiff on the site, cannot be treated as a delivery of material to the department and, therefore, respondent was not bound to make payment against such material. It was averred that work order was issued on 10th July, 1971 and, therefore, appellant cannot start the work before the issue of work order. Any work done by the appellant-plaintiff before the execution of tender agreement and the work order, the respondent is not liable for the same. It was denied that the work of being urgent nature, Executive Engineer had orally asked the appellant-plaintiff to supply material as per the quotations worth Rs.60,000/ before the 1st week of March, 1971. It was averred that the tender agreement was executed on 10th July, 1971 and work order was issued on the same day and any material supplied prior to the date of tender agreement and issuance of work order, respondent-defendant was not liable to pay anything for the work which was carried out by the appellant. It was averred that five running bills were paid to the plaintiff to the tune of Rs.77,181.00 as per the terms and conditions of the tender agreement dated 10th July, 1971 and that appellant had never objected and accepted such payments. It was averred that for the first time, appellant had raised false claim in his letter dated 12th February, 1972. Said letter was duly replied by the Executive Engineer on 9th May, 1972. It was denied that the plaintiff suffered loss to the tune of Rs. 33,711.00. It was further denied that the plaintiff was under paid to the tune of Rs.4680.00 being the amount of sales-tax. It is averred that when five running bills were paid to the appellant plaintiff, he had never raised any contention about sales-tax. Respondent admitted in its written statement that they were liable to pay only Rs. 3091.00 to the appellant plaintiff and the appellant-plaintiff was duly informed to take cheque of Rs. 3091.00 vide letter dated 17th August, 1974, but there was no reply from the appellant-plaintiff. It was further contended that appellant had furnished security deposit of Rs. 6082.00 and not of Rs. 6500.00 and that as per the agreement dated 10th July, 1971, security deposit was to be refunded after three months from the date of passing of final bill i.e. 29th June, 1974 and, therefore, security deposit is required to be refunded on and after 28th September, 1974, that the appellant plaintiff had filed suit on 23rd July, 1974 claiming return of security deposit which was premature and, therefore, suit to recover security deposit was not tenable in law.

4. On the aforesaid pleadings of the parties,

learned trial Judge raised issues at exh.11. Following witnesses were examined by the respective parties; (i) Ramanlal Madhavbhai Patel, partner of the appellant firm at exh.98, and (ii) Arvindbhai A.Shah, Deputy Secretary, Irrigation Department, at exh.115. Appellant and the respondent produced voluminous documentary evidence reference to which shall be made and when necessary during the course of discussion. Learned trial Judge, on overall appreciation of oral as well as documentary evidence, rejected the claim of the appellant for recovery of sales-tax charged at the rate of 3%. Trial Judge has observed that the appellant had not led any evidence in the nature of assessment order for the relevant year passed by the Sales-tax Authority to show that the appellant had to pay sales-tax at the rate of 3% on the price of the material supplied to the government. Trial Judge was of the opinion that in absence of such available evidence, it cannot be said that the appellant was entitled to the amount of sales-tax at the rate of 3% on the price of the material supplied to the government. Trial Judge also rejected the claim of Rs. 18,271-00 being the amount of fixtures and fasteners, being extra item. Trial Judge observed that in the quotations exh.38, it was not stated that the appellant was required to supply fixtures and fasteners and whether he was entitled to claim as extra item for the supply of the said material. It was further observed by the trial Judge that in absence of any evidence led by the appellant, the claim of the appellant that for fixtures and fasteners, he had incurred financial implications to the tune of Rs. 18271-00, deserves to be rejected. Trial Court also rejected appellant's claim for Rs.7760-00 for application of premier base coat of red oxide on the material supplied by the appellant to the government. For the said claim also, the appellant had led no evidence. However, the trial court decreed the suit of the appellant plaintiff for the sum of Rs.12873-00 for the following amounts:-

Rs. 3091-00 Claim admitted by the Respondent
Rs. 6082-00 Security Deposit
Rs. 1267-00 wrongly deducted for the
technical damage.
Rs. 2433-00 wrongly deducted amount.

Rs. 12873-00 Total

Trial Court, therefore, vide judgment and decree dated 3rd May,1980, partly decreed the plaintiff's suit by ordering that the plaintiff do recover Rs. 12873-00 with running interest at the rate of 6% per annum from

the date of decree till realisation from defendant. Trial Judge dismissed the suit of the appellant for the sum of Rs. 34105-00 with costs, which has given rise to filing of this appeal by the appellant.

5. Learned counsel for the appellant Mr. K.G. Sukhwani has taken me through entire evidence and record and proceedings of the case. Counsel for the appellant has submitted that the trial court has not properly appreciated documentary evidence in support of the

appellant's claim for recovery of sales-tax dues, for extra items of fixtures and fasteners supplied by the appellant and for the claim for application of premier red oxide coat on the materials supplied by the appellant. Counsel for the appellant further submitted that there was sufficient material produced by the appellant in support of the above claim and the learned Trial Judge has failed to appreciate the same and erred in rejecting appellant's claim that he was paid less amount as alleged. Counsel, therefore, urged that appeal be allowed and appellant be paid an amount of Rs. 33,711-00 which was paid less by the respondent.

6. I do not find any merits in the contentions raised by the learned counsel for the appellant and hence deserve to be dismissed. With regard to the claim of the appellant towards sales-tax dues, trial Judge was justified in rejecting the said claim on the ground that appellant had not produced any assessment order of the sales-tax authority to show that he was required to pay sales-tax at the rate of 3% on the price of the material supplied by the appellant to the government. Unless, assessment order was produced by the appellant, it was not possible to say that he had paid sales-tax at the rate of 5% as alleged. In absence of any such evidence, learned trial Judge was justified in rejecting this claim. Similarly, the appellant has not led any evidence in support of his claim of Rs. 18,271-00 for fixtures and fasteners. Quotations which is produced at exh.38, did not contain any such condition that appellant had

reserved his right for any extra item which he would supply to the government. Further more, quotations exh.38 did not contain any term or condition whether materials were to be supplied with or without fixtures and fasteners. Even otherwise, the appellant had not proved by leading cogent evidence that he has involved financial implications by supplying fixtures and fasteners to the tune of Rs. 18271-00. Therefore, the

trial Judge was justified in rejecting the aforesaid claim of Rs. 18271-00. Similarly, learned trial Judge was justified in rejecting the claim of Rs. 7760-00 of the appellant on under the head of application if premier red oxide coat on the materials supplied by the appellant to the government. The said claim was based as extra work done by the appellant. No evidence was led by the appellant to show that he was entitled to recover charges for extra item of application of premier red oxide coat on the materials supplied to the Government, as per the quotations at exh.38. In absence of any material produced by the appellant with regard to aforesaid claim of Rs.7766-00 for extra work, learned trial Judge was justified in rejecting the said claim on the ground that mere pleading in plaint cannot take place of evidence. I do not see any infirmity in the findings of the learned trial Judge in rejecting the plaintiff's claim that he was paid less amount to the tune of Rs. 33,711-00. The reasonings given by the learned Trial Judge are based on proper appreciation of evidence and I do not find any error or perversity in said findings and conclusions arrived at by the learned trial Judge.

7. As a result of foregoing discussion, this appeal has no merits and hence appeal is dismissed. No order as to costs.

20.4.2000 [M.H. KADRI, J]

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